

May 15, 2009

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404  
Seattle, Washington 98104  
Telephone (206) 296-4660  
Facsimile (206) 296-1654  
Email [hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov)

**INTERIM REPORT AND ORDER OF REMAND TO PETITIONERS AND DEPARTMENT OF  
TRANSPORTATION FOR LIMITED FURTHER REVIEW**

SUBJECT: King County Department of Transportation File No. **V-2588**  
Proposed Ordinance No. **2008-0076**  
Adjacent Parcel No. **37540-0945**

**TERESA & STEPHEN HANSEN**

Road Vacation Petition

Location: Portion of 88th Avenue Northeast

Petitioners: **Teresa & Stephen Hansen**  
12426 Rainier Drive  
Burlington, Washington 98233  
Telephone: (206) 972-0020

Intervenor: Finn Hill Meadows Neighborhood Association (FHMA)  
*represented by* **J. Richard Aramburu**  
505 Madison Street, Suite 209  
Seattle, Washington 98104  
Telephone: (206) 625-9515  
Facsimile: (206) 682-1376

King County: Department of Transportation, Road Services Division  
*represented by* **Nicole Keller**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 296-3731  
Facsimile: (206) 296-8754

**SUMMARY OF RECOMMENDATIONS/ORDER:**

Department's Preliminary:  
Department's Final:  
Examiner's Order:

Approve road vacation  
Approve road vacation  
Remand for further review

The Department of Transportation's written report to the Hearing Examiner for Item No. V-2588 was received by the Examiner on May 14, 2008.

PUBLIC HEARING:

After reviewing the Department's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on item number V-2588 was opened by the Examiner on May 14, 2008, in the Hearing Examiner's Conference Room, 400 Yesler Way, Seattle, Washington 98104, continued to July 14, 2008 in the Chinook Building Conference Room 120, 401 Fifth Avenue, Seattle, Washington 98104. The hearing was reopened July 21, 2008 for receipt of a supplemental department report regarding the proposed compensation, and response comments from the parties, and closed August 13, 2008. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Road name and location:	Portion of 88th Avenue Northeast
Right of way classification:	A-Class
Area:	1,218 square feet
Compensation Proposed:	\$487.00

2. Notice of hearing on the Department's report was given as required by law, and a hearing on the report was conducted by the Examiner on behalf of the Metropolitan King County Council.
3. Except as provided herein, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department's reports to the Examiner for the May 14 and July 14, 2008, public hearings and during the reopened record.
4. The right-of-way portion at issue is an approximately 25-foot long, 50-foot wide<sup>1</sup> segment of the 88th Avenue NE road right-of-way, which is not opened for public travel along the subject stretch from Northeast 116th Street northward to a deadend at a latitude equivalent to Northeast 120<sup>th</sup> Street, in the Kirkland area.<sup>2</sup> The Petitioners' property, Lot 17, Block 8, *Juanita Beach Camps* subdivision, lies in the mid-portion along this stretch, on its east side. (Maps showing the vicinity of the proposed vacation and the specific area to be vacated are in the hearing record as Exhibit nos. 6 and 12; also see map Exhibits 30 and 31 for location and surroundings.)
5. KCDOT is correct in its conclusion that the entirety of the vacation area would revert to the abutting Hansen property upon vacation. The vacation area<sup>3</sup> lies in the *Juanita Beach Camps* subdivision, wholly within the bounds of original Government Lot 5, Sec. 3, T26N, R5E, W.M. The adjacent Hansen property is the only parcel within that Government Lot 5 which directly

---

<sup>1</sup> Calculated by KCDOT as 1,217 square feet in area.

<sup>2</sup> It is vacated along several former lot frontages well to the south near Northeast 116<sup>th</sup> Street.

<sup>3</sup> Which was deeded to the county for road purposes after a tax foreclosure in 1957.

abuts the vacation area. The adjacent Finn Hill Meadows Neighborhood Association (FHMA) tract abutting the right-of-way directly to the west (directly opposite Petitioners' property) does not lie within the subject government lot, but lies within a different government lot adjacent to the west, Government Lot 4 of the Section. A fundamental principle of reversion upon road vacation is that the land area reverts equally to adjacent parcels *within the bounds* of the pertinent land and road creation area, in this case Government Lot 5. In other words, it is presumed under such principle that the road creation by dedication or other conveyance (in this case by deed), arises out of the particular formal land area within which the road lies, *i.e.*, in this case Government Lot 5, and upon vacation goes back to such land area exclusively. As the FHMA parcel to the west was created within a different government lot, Lot 4, it is not within the government lot from which the road segment was created and it is therefore ineligible to receive any of the reverted right-of-way. In reviewing this issue, absent clear error the Examiner accords substantial deference to KCDOT's interpretation in its administrative expertise and responsibility as official administrator of the public road system in unincorporated King County. [*Mall, Inc. v. City of Seattle*, 108 Wn.2d 369, 385, 739 P.2d 668 (1987)] Upon vacation, the subject road right-of-way segment would revert fully to Petitioners Hansen.

6. KCDOT is wholly erroneous, however, in attempting to apply the above reversion principle to the frontage concurrence requirement of RCW 36.87.020, that a petition for vacation must be agreed upon by the ownership of more than 50 percent of the fronting lands.<sup>4</sup> This is mixing apples and oranges: Provenance (origin) is not frontage, and the issues of provenance and frontage majority are wholly separate. The frontage majority rule is not in any way subordinate to or preempted by the origin of the right-of-way and resultant reversion protocol for determining receivership. The statutory language on the petition approval majority is plain: it is addressed to majority of *frontage*, plain and simple. Regardless of its origin and that of the right-of-way, the FHMA property opposite the Petitioners' directly abuts the road and is equally fronting in nature, and thus its frontage length must be included in any calculation of majority.<sup>5</sup> In other words, merely because a property is disqualified from receivership does not void its frontage status, in general and in this case for purposes of frontage majority calculation in particular. KCDOT's interpretation is clearly erroneous in this regard; its position does not merit deference.
7. For the Hansen vacation petition to be eligible for further consideration of approval, therefore, by operation of RCW 36.87.020 it must be formally supported by the ownership of more than 50 percent of the fronting land. In this case, that cannot be conclusively determined from the record presented thus far: From the evidence presented, it cannot be found with the necessary degree of certainty (to support a finding of fact) that the Hansen ownership constitutes more than 50 percent of the frontage. It appears from the scant record presented<sup>6</sup> in such regard that it likely does: Visual examination of the relatively imprecise graphical representation of the area and surrounding lotting in the record shows that the road vacation area does not appear to be precisely rectangular. As the subject stretch of the 88<sup>th</sup> Avenue Northeast right-of-way tapers from south to north, the northern boundary of the vacation area is apparently of slightly less length than the southern, and as a result the Hansen frontage is slightly angular from a true rectangle and is therefore likely to be slightly longer than the apparently perpendicular FHMA property frontage. (See Exhibit nos. 12, 30 and 31) Thus it would seem from basic principles of

<sup>4</sup> "Owners of the majority of the frontage on any county road or portion thereof may petition the county legislative authority to vacate and abandon the same or any portion thereof." [RCW 36.87.020]

<sup>5</sup> The total abutting property frontage consists solely of the Hansen and FHMA frontages, to the east and west respectively. The areas abutting to the north and south are not fronting properties, but instead are adjacent portions of the subject road, and are properly not to be included in the frontage calculation.

<sup>6</sup> No metes and bounds (dimensional) description or survey map is presented, only a legal description based on lot identification and adjacency and general maps.

geometry that the Hansen frontage constitutes very slightly over 50 percent of the abutting property frontage. But in the final analysis of the record before the Examiner, it cannot be found with a sufficient degree of certainty that that is indeed the case; sufficiently precise documentation of the property dimensions at issue must be presented for a final determination of qualification of the proposed vacation area for consideration under the 50 percent approval rule set forth in RCW 36.87.020. The petition shall therefore be remanded to Petitioners and KCDOT for further review and recommendation in such regard, with presentation of clear evidence of respective frontage lengths.

8. Determining the proper compensation to the County for the road's reversion to the Hansens is a somewhat vexing issue in this case. The language of the applicable code section presents some challenge to interpretation. First, KCC 14.40.020 states, "Vacation shall require compensation at the *full appraised value* of the vacated road for all Class A vacations (the type at issue here)." (Emphasis added) However, the section then goes on to state, "...which amount may be determined from the records of the department of assessments." On the one hand, the code section seems to mandate compensation at appraised value, but on the other allows utilization of department of assessments records of value calculated for purposes of assessment. It is argued by Intervenor FHMA that department of assessment recorded values vary from and in this case are significantly lower than full market value based on full formal appraisals.
9. There is no evidence that the Department of Assessments establishes or maintains valuation records for public right-of-way segments, and it can be inferred from KCDOT compensation value calculation practices that it does not. In determining compensation for vacation, KCDOT has long maintained the practice of calculating the square-foot assessed value of the receiving parcel and applying the resultant square foot value factor to the land area of the proposed road vacation to determine compensation value. That approach is what was conducted by KCDOT in this case and is what has resulted in a recommended compensation value of \$487.00 for the calculated 1,217 square foot vacation area.
10. While there is merit to the argument that such procedure obviously does not provide a full formal "full market value" appraisal of value for consideration, as is seemingly required by the first cited portion KCC 14.40.020, the Examiner in the final analysis concludes that such approach is not required.
11. First, the follow-on clause of the pertinent code section qualifies the first portion's requirement of "full appraised value" by allowing the "amount [to] be determined from the records of the department of assessments." There no requirement in the code that full market value be ascertained. Whether it should, as a policy as Intervenor FHMA argues, is a matter for legislative consideration, and is outside of the parameters of an individual vacation petition, unless the Council determines that it wishes to engage in broad legislative consideration in reviewing the subject petition. That is purely a Council prerogative. As the code stands at present, compensation value is not required to be ascertained through a method other than utilizing department of assessment records.
  - A. FHMA offers Washington case law standing for the proposition that assessor valuations are not a valid basis for ascertaining property value. That may hold in general, but the argument ignores the effect of KCC 14.40.020's express allowance of the use of assessment records. That qualification trumps the general proposition in determining value for road vacation compensation.

- B. Next, FHMA argues that appraised value is *required* to be utilized in determining compensation for road vacations, citing RCW 36.87.120. But RCW 36.87.120 is permissive in its enabling language: “Any ordinance adopted pursuant to this chapter [36.87 RCW] *may* require that compensation for the vacation of county roads...shall equal all or a percentage of the appraised value...” (emphasis added); it does not *require* utilization of appraised value. Here, King County has expressly permitted the utilization of assessment records in determining compensation value.
  - C. FHMA also argues that the term “may” in KCC 14.40.020 does not require that assessment records be utilized. But FHMA’s desired inference that that also means that such utilization should not be permitted does not hold logically. There is no conditionality to the term “may” in the code section; absent such conditionality, it is wholly permissive.
12. Secondly, in this examiner’s experience, KCDOT’s approach to valuing compensation in this case is consistent with its past practice. That is also represented to be so in KCDOT’s reports and Petitioner’s evidence in this matter. KCDOT’s approach is also not shown to be in clear error (particularly given the context of the somewhat awkwardly worded ordinance language cited above). Again, absent clear error the Examiner accords deference to KCDOT’s interpretation in its administration of the public road system. [*Mall, Inc. v. City of Seattle*, above]
  13. It could also be argued that the requirement of KCC 14.40.020 that the compensation value be “as of the effective date of the vacation” means that the vacation area’s valuation for compensation purposes must be determined by taking into account its value *after* vacation, not before; in other words, that the valuation must be based on the estimated value of the post-vacation condition of aggregation with the adjoining (receiving) parcel, not the pre-vacation, stand-alone condition.
  14. It is apparent from the record presented that the vacation would likely add significant value to the Hansen property when combined, based on the combined property’s resultant new development potential; the resultant value is obviously not taken into account by using the current assessed value. However, again, the seeming requirement of “full appraised value...as of the effective date of vacation” is qualified by the code section’s allowance that compensation value “may be determined from the records of the department of assessments.”
  15. The department of assessments maintains records of current (and past) values, not of prospective, even speculative values. FHMA is correct when it notes that “[t]he current assessments from the assessor’s department do not consider combined values after the vacation.” There would therefore seem to be no means of determining prospective, speculative value *from the department records* if the term “as of the effective date of the vacation” is interpreted to require such prospective, speculative valuation. But if FHMA’s argument is taken to its logical conclusion, the department’s records could *never* be employed in determining compensation value because they are not prospective in nature. That interpretation would render the code’s *allowance* of utilization of assessment records meaningless, which runs afoul of principles of statutory construction that all portions of an enactment must be given meaning, and also that interpretations leading to absurd results (absurd in the sense of logic, not policy desires a party may maintain) are to be avoided.

16. In the context of the section as worded, with its seeming ambiguity, another, more reasonable meaning of the clause “as of the effective date of the vacation” is apparent, one which does not present the paradox of speculatively determining prospective value from records of current and past value. The clause simply means that the most current valuation available, from whatever source is utilized, is to be employed in determining compensation. That is what KCDOT has done in this case.
17. On another issue, FMHA argues that the subject land area does not constitute a road, but instead is intended open space and is in use as such. However, the facts are that the land was deeded to the county for road purposes,<sup>7</sup> has been administered by the county as road area, and is designated with a road name (“88<sup>th</sup> Avenue Northeast”). The road area in question constitutes a county road; any informality in its establishment would not be fatal to its road status in any case. [RCW 36.75.100] As county road, it is properly subject to a road vacation petition. [RCW 36.87.020]
18. Lastly, FMHA argues that road vacations of relatively small segments such as the land area in question should not be permitted, but there should be a minimum threshold of extent; they should be of larger, integral road sections. This argument, while it may have some merit from a policy standpoint, is not one which is recognized by the road vacation policy structure currently established in state law and county code. There is absolutely no requirement under applicable state law, county code and/or administrative rule that road vacations only be permitted for significant road segments or road segments which are relatively “whole” pieces of a road system, *i.e.*, there is no limitation on and no minimum of road length, width, extent, land area, etc., to be considered in a proposed road vacation; for example, there is no requirement that a road vacation be required to be of the whole length between intersections, etc. The controlling law in this regard, RCW 36.87.020,<sup>8</sup> in fact expressly states that “[o]wners of the majority of the frontage on any county road *or portion thereof* may petition the county legislative authority to vacate and abandon the same *or any portion thereof*.” (Emphases added) Vacation of the subject road segment is not barred by law.
19. The subject right-of-way segment is not currently opened, constructed or maintained for public use, and is not known to be used informally for access to any property.
20. Vacation of the right-of-way would have no adverse effect on the provision of access and fire and emergency services to the abutting properties and surrounding area.
21. The right-of-way is not necessary for the present or future public road system for travel or utilities purposes.
22. No easements are necessary to be retained for the construction, repair and maintenance of public utilities and services.

### CONCLUSIONS:

1. The right-of-way segment subject to this petition is not useful as part of the King County road system, and the public will be benefited by its vacation.

---

<sup>7</sup> For whatever reason is immaterial; the FHMA opines that the “road purposes” deeding was for want of an alternative. That is speculation and of no consequence in any case in determining whether the area constitutes a road legally.

<sup>8</sup> See Footnote 1.

2. However, the evidence presented is not persuasive at present that the ownership of a majority of the frontage of the vacation area concurs in the petition for vacation. The matter shall accordingly be remanded to the Petitioners and KCDOT so that the record may be supplemented by convincing evidence of majority.
3. Should majority be shown, the proposed vacation would be recommended for approval by the Council.

**ORDER:**

The subject road vacation petition is remanded to the Petitioners and the King County Department of Transportation for further review of the frontage majority issue discussed above.

ORDERED May 15, 2009.

---

Peter T. Donahue  
King County Hearing Examiner

**NOTICE OF RIGHT TO APPEAL**

Note that this order of the Examiner is limited to a remand for further review of the frontage majority issue. The order is not dispositive of a full recommendation on the petition. Upon a dispositive recommendation being issued, the recommendation will be subject to appeal as provided by KCC 20.24.220. Accordingly, appeal at this juncture is solely regarding the findings and conclusions pertinent to the remanded frontage majority issue.

In order to appeal this remand order of the Examiner, written notice of appeal must be filed with the Clerk of the Metropolitan King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before May 29, 2009***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before June 5, 2009***.

Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal. Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3<sup>rd</sup> Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficiently timely if actual receipt by the Clerk does not occur within the applicable time period.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the order of remand by the hearing examiner contained herein shall stand as issued.

MINUTES OF THE MAY 14 AND JULY 14, 2008 PUBLIC HEARING ON DEPARTMENT OF TRANSPORTATION, ROAD SERVICES DIVISION FILE NO. V-2588.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Nicole Keller and Kelly Whiting, representing the Department; Teresa and Stephen Hansen, the Petitioners; Richard Aramburu representing the Intervenors; Michael Steep, Mark Mason, Tim Ord and Jim Barker.

The following exhibits were offered and entered into the record on May 14, 2008:

- Exhibit No. 1 Report to the Hearing Examiner for the May 14, 2008 hearing, with 17 attachments.
- Exhibit No. 2 Petition transmittal letter, dated January 8, 2007 to King County Department of Transportation (KCDOT), from Clerk of the Council
- Exhibit No. 3 Petition for vacation of a County road including legal descriptions of petitioners' properties dated January 1, 2007
- Exhibit No. 4 Copy of filing fee, check no. 9302, in the amount of \$100
- Exhibit No. 5 Receipt no. 00820 for filing fee
- Exhibit No. 6 Vicinity map
- Exhibit No. 7 King County Treasurer's deed no. 36813
- Exhibit No. 8 King County Plat Map of Juanita Beach Camps
- Exhibit No. 9 Monthly Rental Agreement between King County and Paul Hayden Kirk; Lease Agreement between King County and Finn Hill Meadows Homeowner's Association
- Exhibit No. 10 Lease Program Input Sheet
- Exhibit No. 11 Rental Agreement Invoice for 2007
- Exhibit No. 12 Map depicting vacation area
- Exhibit No. 13 Water Easement for subject area, KC recording no. 20070412000984
- Exhibit No. 14 Sewer Easement for subject area, KC recording no. 20070412000985
- Exhibit No. 15 *Not entered into the record*
- Exhibit No. 16 Recommendation and request for compensation letter from KCDOT to Petitioners
- Exhibit No. 17 Compensation Worksheet
- Exhibit No. 18 Copy of compensation payment, check no. 5951028177 in the amount of \$487
- Exhibit No. 19 Letter regarding possible change in amount of compensation due from KCDOT to Petitioners
- Exhibit No. 20 Recommendation letter from KCDOT to KC Council
- Exhibit No. 21 Proposed Ordinance transmittal letter from KCDOT to KC Council
- Exhibit No. 22 Proposed Ordinance 2008-0076
- Exhibit No. 23 Fiscal Note
- Exhibit No. 24 Affidavit of Posting for March 19, 2008 hearing (later cancelled), signed March 7, 2008
- Exhibit No. 25 *not submitted*
- Exhibit No. 26 Affidavit of Posting for April 2, 2008 hearing (proceeding later converted to a prehearing conference), signed March 12, 2008
- Exhibit No. 27 Affidavit of Posting for May 14, 2008 hearing, signed April 15, 2008
- Exhibit No. 28 Email regarding Real Estate Services' (RES) position on subject vacation petition, from Denise Hauck to Nicole Keller and Anne Lockmiller dated April 7, 2008
- Exhibit No. 29 Email reiterating RES' position on subject vacation petition, from Anne Lockmiller to Denise Hauck and Nicole Keller, dated April 7, 2008
- Exhibit No. 30 Map depicting vacation area submitted by Petitioner
- Exhibit No. 31 KC Department of Assessments Map for SW 30-26-05
- Exhibit No. 32 Affidavit of Publication for April 2, 2008 hearing (proceeding later converted to a prehearing conference), signed March 26, 2008
- Exhibit No. 33 Affidavit of Publication for May 14, 2008 hearing, signed May 9, 2008



- Exhibit No. 34 Email stating RES' position on the subject vacation petition, from Nicole Keller to the Hearing Examiner, dated May 13, 2008
- Exhibit No. 35 Appraisal of subject vacation area completed by Appraisal Group of the Northwest at the request of Finn Hill Meadow Homeowners' Association (FHMHA)
- Exhibit No. 36 Hearing Memorandum of Finn Hill Meadows Association, received May 14, 2008
- Exhibit No. 37 Email regarding FHMHA's request for intervenor status, from Mark Mason to the Hearing Examiner, dated March 21, 2008
- Exhibit No. 38 Copy of map depicting utility easements on the subject vacation area
- Exhibit No. 39 Revised Exhibit 30
- Exhibit No. 40 Petitioner's comparable sale no. 1
- Exhibit No. 41 Petitioner's comparable sale no. 2
- Exhibit No. 42 Petitioner's comparable sale no. 3

The following exhibits were offered and entered into the record on July 14, 2008:

- Exhibit No. 43 Summary Appraisal of Vacant Land at Proposed 88th Avenue NE Vacation
- Exhibit No. 44 Photograph of the SW corner of the vacation parcel
- Exhibit No. 45 Rental agreement from Christopher Young at Real Estate Services

The following exhibit was entered into the record on July 31, 2008:

- Exhibit No. 46 KCDOT memorandum dated July 30, 2008 to the Hearing Examiner RE:  
Recommendation Regarding Compensation Received Prior to Public Hearing

The following exhibit was entered into the record on August 11, 2008:

- Exhibit No. 47 Petitioners' memorandum dated August 11, 2008 to the Hearing Examiner regarding compensation valuation

The following exhibit was entered into the record on August 13, 2008:

- Exhibit No. 48 Intervenor's letter dated August 11, 2008 to the Hearing Examiner regarding compensation valuation

PTD:vsm  
V-2588 RPT